COUR DES COMPTES

Summary

of the **Public Thematic Report**

Nicolas Hulot Foundation for Nature and Mankind

2005-2010 reporting periods

October 2012

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Introduction

Originally known as Association Ushuaïa, the Nicolas Hulot Foundation for Nature and Mankind (Fondation Nicolas Hulot pour la nature et l'homme, FNH) became in August 1996 the first foundation to be recognised as serving the common public interest in the area of the environment.

The foundation had long been dedicated to educating the public, especially the very young, about the environment, before turning to focus, with a revision of its by-laws in 2005, on "community action" with what the foundation terms "lobbying in the general interest".

This change was accompanied by an expanded appeal for public donations whose revenues, despite their significant increase from 2004 through 2007, never represented more than 19% of the foundation's total resources.

Some 60% of FNH's funding is derived from government grants and corporate sponsorship.

The objective of this initial audit of the foundation by the Cour des Comptes was to verify

- application of the first paragraph of article L. 111-8 of the Financial Courts Code, use of resources statement for donations collected from the public from 2005 to 2010, and compliance of expenditure with objectives given in requests for public donations;

- application of the third paragraph of article L. 111-8 of the Financial Courts Code, use of resources from corporate sponsorship for the 2010 reporting period and compliance of expenditure for this purpose with the foundation's objectives;

- application of articles L. 111-7 and R. 133-4 (fourth paragraph) of the same code, statement describing use of government grants received by the foundation for 2005-2010.

1 Description of the foundation

By-laws and organization

In the terms of Article 2 of its original by-laws, the objective of the FNH was "to further education about the environment" as part of "an educational scientific and cultural commitment in the service of mankind's natural heritage". It was administered by a board that met "at least every six months" (Article 7 of the by-laws) and composed at the time of 13 members in three committees (Article 4 of the by-laws):

1) three ex officio members: the interior minister or his representative, the minister for the environment or his representative, and the minister for education or his representative;

2) five founding representatives: Nicolas Hulot, founding president; Rhône-Poulenc S.A.; EDF; mayoralty of Paris and L'Oréal;

3) qualified members, or *"five members, individuals, co-opted by the above-mentioned* [ex officio and founding members], *by reason of their personal skills in the foundation's area of activity".*

The foundation was unable to obtain the total number of qualified members for its board as required by its by-laws in 2007 and 2008, even though the total was reduced from five to three in 2005.

While the administrator functions are unpaid, the FNH does pay certain experts on its consulting committees without the principle for this payment being authorized by its constitution.

It is therefore incumbent upon the FNH to take the steps to have the administrative authority approve a change on this point in its internal regulations.

FNH had some forty employees in 2010.

Its wage bill has increased significantly since 2005 to account for more than 40% of its resources, but this observation also includes its effort to provide expertise and information to the general public.

Description of the foundation

Efforts

From 1990 to 2005, a foundation dedicated to environmental education

Until 2005, the foundation's mission was educational and directed at young people and schools. In March 1997, it launched its first civic campaign for the environment. The Nicolas Hulot School for Nature and Mankind, dedicated to studying and defending biodiversity, opened in 2004.

"Lobbying in the general interest" (2005-2010)

The revision to the by-laws in 2005 enlarged the foundation's scope to include lobbying, which the foundation qualified as in the general interest.

The major steps in this second phase of the foundation: in May 2005, launch of "Challenge for the earth", the first national citizen campaign; in 2006, the "Ecology pact"; and in 2007, participation in the Environmental Round Table launched by the French President. The now central duties of the foundation of "policy watch and forecasting" continued, and even expanded, over the next three years.

Structure of its resources

From 2005 to 2010, except for extraordinary donations and gifts in kind, the FNH had on average nearly €4.7 million in resources each year, of which three categories represent the overwhelming share: revenues from public donations, corporate sponsorship and government grants.

2 Auditing use of revenue from public donations

Revenue from public donations

For the most part, this concerns donations as the foundation accepted only five bequests between 2005 and 2010. Up to and including 2005, donations were a minor source of income for the foundation, and represented only 4.3% of its current revenue in 2005.

In 2007, the foundation engaged in an active strategy of appealing for public donations. The resulting increase in donations appears closely related to the events of the period, particularly the ecology pact and the positive image that Nicolas Hulot derived from it.

Since then, events created a fragile, if not uncertain, situation, corroborated by the figures for the 2010 reporting period, which indicate a drop of nearly one third in donations compared with 2009.

Use of resources statements for 2005-2010

Use of resources statements for 2005-2007

Before regulation 2008-12 went into effect, to its credit the FNH had already established specific "use of public donations" statements in compliance with the spirit of the 1991 legislation.

Examination of its use of resources statements for 2005-2007 has shown that their presentation as exhaustive of information to be provided (required sections) did not comply with the instructions of the decree of 30 April 1993.

Use of resources statements for 2008-2010

Since 2008, the foundation's use of resources statement has been provided in the new format required by regulation 2008-12.

According to this regulation, social missions must "be labelled concisely and clearly to correctly indicate the donors (…) and clearly explained in the accounting annex following the annual use of resources statement."

Auditing the use of revenue from public donations

The foundation defines, in its accounting annex, eight social missions, a nomenclature that relies on its use of resources statement but does not retrace its activity as the foundation itself describes it in its by-laws and public communications.

Thus, beginning in 2008, while it correctly presents the field "policy watch and forecasting, proposals and lobbying" as its principal mission, its use of resources statement does not retrace all of the resources assigned to this effort which are found spread over the sections on thematic programmes.

In application of regulation 2008-12, the foundation is responsible for freely defining its social missions. However, the objective stated in the by-laws, public communications on these missions and their nomenclature in the use of resources statement must be consistent so that this can be used as intended to retrace allocation of general public donations to social missions.

Aside from these comments, the foundation's use of revenues from public revenues appears to comply with the objectives stated in its appeals to the public.

3 Auditing use of resources from corporate sponsorship

Recognized as serving the common public interest in protecting the natural environment, FNH is authorized to receive contributions from public and private enterprises in the form of sponsorship in application of the provisions of law 2003-709 of 1 August 2003 relating to sponsorship, associations and foundations.

The resources from corporate sponsorship (monetary or in kind) amounted to €4,362,623 in 2010, or more than 77% of the total of current revenues, a share that is significantly higher than the ceiling of 50% the foundation itself states for its goal.

In application of the measures of the third paragraph of Article L. 111-8 of the Financial Courts Code, the audit by the Cour des Comptes concerned "consistency between the objectives (of the foundation) and the expenditure funded by these donations."

To its credit, the foundation regularly signs agreements to manage its partnerships with firms, even though agreements are not required for sponsorships.

The annexes and special clauses included demonstrate that the foundation is aware of the risks for its image, whether in regard to its freedom to act or to speak or the risk of being accused of being paid for "greenwashing".

The foundation must ensure that there is compliance with the objectives and clauses in its sponsorship agreements.

The foundation thus has a clause that states, "a hypertext link shall be included on the Foundation's website to an institutional page which does not offer merchandise for sale on the partner's website where the partner can explain the reason for its sponsorship of the foundation." In a number of cases, the link is to the partner's regular site and thus to pages where products are advertised.

More to the point, in its public communications about partnerships with firms, the foundation insists on the opportunity the partnerships provide to publicize good environmental practices with regard to these firms. The issue thus arises about the foundation's efforts to assess whether this objective is actually achieved. Its annual reports are not forthcoming on this subject.

Nevertheless, the use of funds from sponsorship appears to comply with the foundation's objectives.

4 Auditing use of government grants

Operating grants

In compliance with Article L. 111-7 of the Financial Courts Code, the Cour des Comptes undertook to audit the use of these grants for the period under review given that the FNH was able to provide the use of grant statements upon request.

Verification found no anomaly in the use of these operating grants, nor any in the statements of use returned to sponsoring organisations.

Investment grant from the Ministry of Culture for the restoration of the Fleur de Lampaul

Aside from its headquarters, the FNH owns the Fleur de Lampaul, a sailing ship built in 1948, which has been classified as historical monument since 21 January 1987 and acquired by the foundation in autumn 2001.

Between January 2004 and January 2005, restoration estimates presented to the foundation's board increased from €325,000 to €961,566 including taxes.

The board's approval of this increase was conditioned upon a prospect that the government would provide a grant in the amount of 40% of the total since the ship was classified as a historical monument in 1987.

The foundation ultimately received a grant of €230,072.24 from the Ministry of Culture. In 2010, the foundation terminated use of the boat and sold a 51% share without informing the Ministry of Culture.

In application of Article L. 622-16 of the Code du Patrimoine (French Heritage Code), "The person agreeing to disposal [of an object classified as a historical monument] shall inform the administrative authority within fifteen days of the date of completion." Failure to comply with this measure is punishable by Article L.624-1 of the same code.

It has been established that there was a change in the use of the Fleur de Lampaul, which began to be used, among other things, for "theme day outings" (history, gastronomy, introduction to sailing, etc.), and for cruises.

This should have led the Ministry of Culture to implement the provisions of Article 15 of decree 99-1060 of 16 December 1999 relating to government grants for investment projects, which, in the event "the object of the grant or the use of the investment receiving funding changes without authorization," provides that "the competent authority shall require total or partial reimbursement of the grant."

Provision of staff by the Ministry of Education

Between 2005 and 2010, the government also provided the FNH with four civil servants, including two from the Ministry of Education.

The legal framework for this provision is set by Articles 41, 42 and 44 of Law 84-16 of 11 January 1984 concerning regulatory provisions relating to the civil service, as modified by Law 2007-148 of 2 February 2007 (Art. 10).

From the viewpoint of these provisions, the foundation, before and after 1 July 2007, fell under the category of organisations that may benefit from having civil servants at its disposal.

Under the system in place prior to 1 July 2007, total or partial exemption from reimbursement requires that it be stated in an agreement "between the managing government administration and the host organisation."

For the provision of two civil servants from the Ministry of Education, neither the foundation nor the ministry provided a copy of the agreement signed for this purpose.

The two civil servants concerned were assigned beginning in 2004 to the Nicolas Hulot School for Nature and Mankind, which is a legal entity distinct from the foundation, even if the latter sits on the board of the school jointly with the Fondation de France.

No agreement was concluded between the Ministry of Education and this association, which is respectively a "managing administration" and "host association" within the meaning of Article 3 of the decree of 16 September 1985.

In the new framework of the law of 2 February 2007, renewal of previous staff provisions was only possible on two conditions: as before, provided in a contract between the administration making the provision and the host organisation, and unless the law provides for an exception, reimbursement by the host organisation is required.

Besides the continuing lack of any agreement with the Ministry of Education, the Nicolas Hulot School did not fall within the scope of any of the legislative exemptions for reimbursement.

Based on the limitation rules, it follows that the provision of staff by the Ministry of Education during the audited reporting periods should be reimbursed to the government.

In addition to the consequences for the foundation and the school, responsibility for this situation falls first on the Ministry of Education which could not have been unaware of ignoring the legal and regulatory provisions involving these staff provisions from the start.

The minister has since acknowledged that his ministry's support of projects directed by the government to supplement the effort of the ministry henceforth falls "entirely within the scope of current legislative and regulatory provisions."

Public grants and regulatory agreements

Article L. 612-5 of the French Commercial Code states:

"The legal representative or the statutory auditor, if any, of a not-for-profit private-law entity engaged in economic activities or of an association referred to under Article L. 612-4 shall present a report regarding the agreements entered into directly or through anybody standing between the legal entity and one of its directors or one of the persons acting as an officer... The governing body shall rule upon the report... The provisions of this article shall not apply to ordinary contracts entered into under normal terms and conditions which, due to their object or their financial implications, are of no great importance for any of the parties."

Article L. 612-4, first paragraph, of the same code refers to "Any association that has received one or more annual grants from public authorities, within the meaning of Article 1 of the Act of 12 April 2000, or from public bodies of an industrial or commercial nature, of which the total amount exceeds a threshold fixed by a decree (…)."

Introduced by Article 5 of ruling 2005-856 of 28 July 2005, this provision covers the case of foundations as stated in Article 9 of the same ruling.

As a result, any contract between the FNH and one of its administrators, or between FNH and another legal entity for which one of the executives is also an administrator of the foundation, falls under the scope of the regulatory agreements as set forth by Article L. 612-5 in the Commercial Code cited above.

No dispensation exempts the government in its role as administrator.

The agreements thus signed by the FNH between 2005 and 2010 are considered regulatory agreements for grants with the Ministries of Education and the Environment, with the ministers concerned having the role of administrators of the foundation.

The foundation has indicated to the Cour des Comptes that the new by-laws call for replacing the committee of ex-officio members by a government commissioner who will participate in board meetings.

Conclusion

The Cour des Comptes confirms that the use of revenue from public donations appears to comply with the objectives stated in the appeals; however, the Cour des Comptes notes that the description of social missions in the use of resources statements cannot be tracked as defined elsewhere by the foundation.

Based on a detailed examination of the main agreements, the Cour des Comptes concludes that the objectives of the foundation comply with the expenditure funded by corporate sponsorship; nevertheless, while the foundation insists in its communications with the public on the opportunity offered by these partnerships to spread good environmental practices among the staff and leaders of these companies, it has not provided itself with the resources to evaluate whether this objective has been achieved.

Finally, the investigations by the Cour des Comptes found no anomalies either in the use of government operating grants or in the use of resources statements returned to the organisations providing these grants. There are however two exceptions to this observation: the conditions in which the Ministry of Education placed two of its civil servants at the disposition of the foundation and the conditions for selling and changing the use of the sailing ship Fleur de Lampaul after a restoration which was subsidized by the Ministry of Culture.

Recommendations

➔ supplement the internal regulations of the foundation to anticipate if the following practice should continue - possible remuneration of committee members referred to in Article 7 of the by-laws;

➔ make the nomenclature of social missions in the use of resources statement consistent with the definition given by the foundation in its by-laws and public communications;

➔ formalize assessment of the objective of spreading good environmental practices expected of companies that sponsor the foundation.